In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.1768 of 2007.

Date of decision:24.4.2007.

Rati Ram.

...Petitioner.

Versus

Shish Ram and others.

...Respondents.

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Coram: Hon'ble Mr. Justice S. N. Aggarwal.

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Present: Mr. Jaivir Yadav Advocate for the petiitoner.

Mr.R.D.Yadav Advocate for the respondents.

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Judgment.

S. N. Aggarwal, J.

Elections for the office of Sarpanch of Gram Panchayat of village Jhund Sarai, Block and Tehsil Farrukh Nagar, District Gurgaon had taken place on 3.4.2005. Rati Ram petitioner and the respondent Nos.1 to 4 had contested the elections but the main contest was between the petitioner and respondent No.1. The total votes of the village were 1050 but polled votes were 883. The following result emerged:-

Rati Ram (Petitioner)	281 votes.
Shish Ram	280 votes.

The other candidates also polled negligible number of votes.

Rati Ram was declared elected Sarpanch of Gram Panchayat of village Jhund Sarai. Shish Ram, respondent No.1 filed Election Petition. He also applied for recounting of votes but the application for recounting was dismissed. However, respondent No.1 filed Civil Writ Petition No.3236 of 2006 which was accepted by this Court vide order dated 22.8.2006 and the trial Court was directed to hold scrutiny and computation of valid votes polled in favour of all the candidates. Accordingly, the votes were re-counted by the learned Additional Civil Judge (Senior Division), Gurgaon and the following result emerged:-

Rati Ram (petitioner) 278 votes

Shish Ram (respondent) 287 votes.

The other candidates also secured negligible number of votes. Since Shish Ram secured maximum number of votes, therefore, he was declared elected by the learned trial Court vide impugned order dated 21.3.2007.

Hence, the present petition.

The submission of learned counsel for the petitioner was that he had filed objection petition on 21.3.2007 (Annexure P-6) but the same was not decided by the learned trial Court. Therefore, the result declared by the Court of Additional Civil Judge (Senior Division), Gurgaon was illegal. In the said objection petition, it was specifically pleaded by the petitioner that five votes bearing specific numbers were not counted in favour of the petitioner while one vote had been wrongly counted in favour of the respondent. It was further submitted that admittedly 883 votes were polled but the total number of votes counted by the learned trial Court was 879

and difference of four votes was not explained. Hence, it was prayed that the impugned order dated 21.3.2007 be set aside.

These submissions have been considered. The counting of votes had taken place in the presence of the counsel for the parties. The ballot boxes which were duly sealed were called in the trial Court. These were checked. The seals were found intact. In the open Court, the seals were opened and the re-counting of votes was conducted fairly and judiciously in the presence of counsel for the parties and the parties themselves. Therefore, the filing of objection petition by the petitioner on the same day alleging that five votes were not counted in favour of the petitioner and one vote was illegally counted in favour of the respondent was nothing but a futile exercise made by the petitioner to get out of the final result that emerged after counting of votes. Why should the Court fail to consider the votes in favour of the petitioner if those votes were valid, and why should the Court count an invalid vote in favour of the respondent if it was not valid. In these circumstances, the objection of the petitioner that some polled votes of the petitioner were not counted in his favour and one invalid vote was counted in favour of the respondent is absolutely fictitious and imaginary.

The learned trial Court had only complied with the directions passed by this Court vide order dated 22.8.2006 and conducted the scrutiny and computation of the valid votes polled in favour of all the candidates. This objection of the petitioner automatically stood rejected once the Court held that the petitioner had secured 278 valid votes and Shish Ram had secured 287 valid votes. This automatically rejects the version of the petitioner that valid votes of the petitioner have been rejected illegally and

invalid vote of the petitioner has been counted illegally.

It was further submitted that the votes polled in all were 883 but only 779 votes were found in the ballot boxes. It has been specifically observed in the impugned order dated 21.3.2007 that ballot boxes were duly sealed. The boxes were brought to the trial Court in the presence of counsel for the parties. The seals on these boxes were found to be intact. The seals on the ballot boxes were broken in the presence of counsel for the parties and the votes were counted in their presence and in the presence of the parties themselves. Whatever votes were found in the ballot boxes have been counted and these were found to be 779. Even if four votes were found missing that does not give any right to the petitioner because the margin of votes between the votes polled by the petitioner and the votes polled by the respondent was nine and not four. Even if these four votes had been counted in favour of the petitioner, still he would be failing to secure more votes than the votes secured by Shish Ram, respondent No.1. This objection is not legally sound to set aside the result declared by the Additional Civil Judge (Senior Division), Gurgaon.

In the net result, there is no merit in the present petition and the same is dismissed.

April 24,2007. (S. N. Aggarwal)
Jaggi Judge